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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,605	01/16/2001	Michael D. Culler	00537-149003 / BPC044A	5812

7590 05/16/2003  
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225 Franklin Street  
Boston, MA 02110-2804

EXAMINER

TELLER, ROY R

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 05/16/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/761,605

Applicant(s)

CULLER ET AL.

Examiner

Roy Teller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 142 and 143 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 142 and 143 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to Paper No: 14, received 3/3/03.

Claims 142 and 143 will be examined.

#### ***Claim Rejections - 35 USC § 112***

The rejection under 35 USC 112, first paragraph of claims 142 and 143 is upheld.

Claims 142 and 143 were rejected for introducing new matter into the disclosure and for containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant argues that the specification discloses various additional aspects of the invention providing a method of inhibiting fibrosis in a patient, wherein no limitation on the location of the fibrosis within the body is recited. Examiner disagrees, citing pages 22-23 of the instant specification, in which the embodiments of the invention are disclosed.

The rejection under 35 USC 112, second paragraph of claims 142 and 143 is upheld.

Claims 142 and 143 were rejected as being indefinite for failing to define where the fibrosis is located. Applicant argues that the fibrosis is located in a patient. Examiner contends that the embodiments of the invention on page 22 and 23 of the instant

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specification define the limitations with the exception of the nose, since every other disclosed embodiment has been eliminated in the claims.

### ***Double Patenting***

Upon further consideration, the double patenting rejection of claims 142 and 143 is withdrawn. However, upon amendment to eliminate the new matter, the rejection will be reinstated if applicable.

### ***Conclusion***

All claims are rejected. This action is made FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy Teller whose telephone number is (703) 305-4243. The examiner can normally be reached on Monday-Friday from 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

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*Brenda Brumback*  
**BRENDA BRUMBACK**  
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